

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF WEST OLDHAM UTILITIES, )	
INC. FOR A DEVIATION PURSUANT TO 807 KAR )	CASE NO.
5:066, SECTION 12(4), REGARDING EXTENSIONS)	91-099
OF SERVICE )	

O R D E R

On March 27, 1991, West Oldham Utilities, Inc. ("West Oldham") filed a request pursuant to 807 KAR 5:066, Section 12(4), for a deviation from the provisions of 807 KAR 5:066, Section 12(2), in order to obtain Commission approval of a proposed water-line extension agreement ("Agreement"). The Agreement, which is specifically conditioned upon approval by the Commission, involves the extension of water service to a new subdivision in West Oldham's service area. Pursuant to the Agreement, the developer of the subdivision will be responsible for all costs associated with the construction and installation of distribution mains and water lines. Upon completion of the system, the developer will turn over ownership of the water distribution facilities to West Oldham. In the Agreement, the developer expressly waives any right it may have to refunds for the costs of the extension pursuant to 807 KAR 5:066, Section 12(3). (Although West Oldham in its application requested a deviation from Section 12(2) of the regulation, the applicable provision is in fact Section 12(3)).

In addition to its request for a deviation from the refund provisions of 807 KAR 5:066, Section 12, West Oldham requested in its application that the Commission approve those provisions in the Agreement which require the developer to pay a cash payment to West Oldham for the tax liability generated by the transfer of the facilities to West Oldham. West Oldham also requested from the Commission an acknowledgement and confirmation that the described cash payment would not be considered income for rate-making purposes.

By letter received at the Commission on May 31, 1991, West Oldham requested an informal conference with Commission Staff to discuss its application. The informal conference was held on June 10, 1991 at the Commission's offices. As a result of discussion at the informal conference and subsequent telephone conversations with Staff, on June 11, 1991, West Oldham filed an amended proposed Agreement which deleted and altered certain provisions of the original Agreement filed with its application. Specifically, the amended Agreement deletes the provision that the developer provide a cash payment to the utility for the income tax liability generated by the transfer of the facilities to the utility. West Oldham is a "Subchapter S" corporation under the Internal Revenue Code. "In general, an S corporation does not pay income tax. Instead, the corporation's income and expenses are divided among and passed through to its shareholders, who then must report the

income and expense on their own income tax returns."<sup>1</sup> As amended, the Agreement for which West Oldham now seeks approval provides that, although the developer recognizes that the additional tax liability generated by its contribution in aid of construction is the responsibility of the sole shareholder of the corporation, it knowingly agrees to pay this liability to the shareholder (as opposed to the utility/corporation) as part of the Agreement. The amended Agreement also deletes the request that the Commission acknowledge that the cash payment will not be considered income for rate-making purposes.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Inasmuch as the developer in this Agreement knowingly waives his right to refunds pursuant to 807 KAR 5:066, Section 12(3), good cause exists to grant a deviation from that regulation pursuant to 807 KAR 5:066, Section 12(4), which permits utilities to make extensions under different arrangements than those provided in the regulation provided such arrangements have been approved by the Commission.

2. Inasmuch as the amended Agreement filed by West Oldham with the Commission on June 11, 1991 provides that the cash payment representing the additional tax liability to the shareholder generated by the contribution in aid of construction

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<sup>1</sup> U.S. Master Tax Guide, Chapter 3, Paragraph 301 (1990).

is paid directly to the individual shareholder, and not to the utility, the Commission has no jurisdiction over such transaction. Thus, the Commission does not have the authority to approve or disapprove the provision.

IT IS THEREFORE ORDERED that:

1. West Oldham be and hereby is granted a deviation from the provisions of 807 KAR 5:066, Section 12(3).

2. The amended Agreement filed on June 11, 1991 is approved with respect to all provisions which constitute agreements between the developer and the utility/corporation, West Oldham.

Done at Frankfort, Kentucky, this 19th day of June, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director